

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

Ramón Cintrón, Esq. SBN 200970
300 South Spring Street
South Tower, Suite 12700
Los Angeles, CA 90013
Telephone: 213-346-6638
Facsimile: 213-897-9241

Attorneys for John Garamendi,
California Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER
STATE OF CALIFORNIA

In the Matter of the Licenses and Licensing
Rights of

QBE REINSURANCE CORPORATION,

Respondent.

File Nos.: UPA 03-03-0086-AP

OAH No. L-2004020447

**ORDER TO SHOW CAUSE, STATEMENT
OF SPECIFIC CHARGES/ACCUSATION,
NOTICE OF MONETARY PENALTY**

Date: June 29 & 30 , 2004

Time: 10:00 A.M.

Place: Office of Administrative Hearings
1350 Front Street, 6th Floor, Suite 6022
San Diego, CA 92101

ORDER TO SHOW CAUSE

WHEREAS, the Insurance Commissioner of the State of California (hereafter, “the Commissioner”) has reason to believe that QBE REINSURANCE CORPORATION, hereinafter referred to as “Respondent,” has engaged in or is engaging in this State in the unfair methods of competition or unfair or deceptive acts or practices, and other unlawful acts, as set forth in the STATEMENT OF SPECIFIC CHARGES/ACCUSATION contained herein; and

WHEREAS, the Commissioner has reason to believe that a proceeding with respect to the alleged acts of Respondent would be in the public interest;

NOW, THEREFORE, and pursuant to the provisions of § 790.05 of the California

Insurance Code, Respondent is ordered to appear at 10 A.M. on June 29 & 30 2004, at Office of Administrative Hearings, 1350 Front Street, 6th Floor, Suite 6022, San Diego, California 92101, and show cause, if any cause there be, why the Commissioner should not issue an Order requiring Respondent to Cease and Desist from engaging in the methods, acts, and practices set forth in the STATEMENT OF SPECIFIC CHARGES/ACCUSATION contained in Paragraph 5 herein, and imposing the penalties set forth in § 790.035 of the Insurance Code and as requested in the PRAYER AND NOTICE OF MONETARY PENALTY, Paragraph 7 herein.

GENERAL STATEMENT

1. From October 29, 1976 to the present QBE REINSURANCE CORPORATION, under this or former company names, has been the holder of a Certificate of Authority (Certificate Number 2228-5) issued by the Commissioner to act in the capacity of a property and casualty insurer.

2. Under the authority granted pursuant to Part 2, Chapter 1, Article 4, §§ 730, 733, 736 and Article 6.5, § 790.04 of the California Insurance Code and Title 10, Chapter 5, Subchapter 7.5, § 2695.3(a) of the California Code of Regulations, the Commissioner made an examination of Respondent's claims practices and procedures in California. The examination covered Respondent's claims handling practices during the period March 1, 2001 through February 28, 2002. The examination was made to discover, in general, if these and Respondent's other operating procedures conform with the contractual obligations in the insurance policy forms, to provisions of the California Insurance Code ("CIC"), the California Code of Regulations ("CCR"), other insurance related statutes, and case law. The examination (hereinafter "Examination") included reviews of:

a) The guidelines, procedures, training plans and forms adopted by Respondent for use in California, including any documentation maintained by Respondent in support of positions or interpretations of fair claims settlement practices;

b) the application of such guidelines, procedures and forms, by means of an examination of claims files and related records; and,

1 c) consumer complaints received by the California Department of Insurance in
2 the most recent year prior to the Examination.

3 3. The Examination was conducted at Respondent's claims office in San Diego,
4 California. The examiners reviewed a total of two-hundred seventy-one (271) personal
5 automobile claim files. The review identified sixteen (16) claims handling violations, all under
6 CIC § 790.03 (h) and the Fair Claims Settlement Practices found in CCR, Title 10, Chapter 5,
7 Subchapter 7.5, §§ 2695.3 through 2695.8 (adopted pursuant to CIC § 790.034), and as more
8 specifically set forth below. The pattern and frequency of the violations indicate a general
9 business practice.

10 4. In addition, to the Fair Claims Settlement Practices Act violations, the examiners
11 identified one-hundred eight (108) violations of other sections of the CIC, CCR, and of the
12 California Vehicle Code § 11515(b) for failure to notify the Department of Motor Vehicles that
13 the owner of a total loss salvage vehicle retained possession of the vehicle, or failure to notify the
14 insured or automobile owner of his/her responsibility to comply with California Vehicle Code
15 ("CVC"). The pattern and frequency of the violations indicate a general business practice.

16 **STATEMENT OF SPECIFIC CHARGES/ACCUSATION**

17 5. As a result of the Examination, the Commissioner, in his official capacity, now
18 alleges that Respondent has violated provisions of the Fair Claims Settlement Practices
19 Regulations (CCR, Title 10, Chapter 5, § 2695.1 et seq.), other sections of the CIC, CCR, and
20 CVC, as follows:

21 **SPECIFIC VIOLATIONS**

22 a) In two (2) instances, Respondent's claim files failed to contain all
23 documents, notes and work papers which pertain to the claim, in violation of CCR § 2695.3(a).

24 d) In one (1) instance, Respondent failed to respond within fifteen days of
25 receiving a communication that reasonably suggests that a response is expected, in violation of
26 CCR § 2695.5(b).

27 c) In two (2) instances, Respondent failed to provide written notice of any
28 statute of limitations or other time period requirement not less than sixty (60) days prior to the

1 expiration date, in violation of CCR § 2695.7(f).

2 d) In one (1) instance, Respondent attempted to settle a claim by making a
3 settlement offer that was unreasonably low, in violation of CCR § 2695.7(g).

4 e) In three (3) instances, Respondent failed to provide written basis for the
5 total loss settlement and/or provide the insured with a list of comparable valuations and/or failed
6 to pay all fees and taxes, license fees incident to transfer of evidence of ownership of the
7 comparable automobile, in violation of CCR § 2695.8(b)(1).

8 f) In one (1) instance, Respondent failed to document deductions from value,
9 including deduction for salvage, by failing to provide written basis for deductions that are
10 discernable, measurable, itemized and specified as well as be appropriate in dollar amount, in
11 violation of CCR Section § 2695.8(b)(1).

12 g) In three (3) instances, Respondent failed to supply the claimant with a copy
13 of the estimate upon which the settlement is based, in violation of CCR § 2695.8(f).

14 h) In three (3) instances, Respondent failed to document and to explain in
15 writing the basis of betterment, depreciation, or salvage, in violation of CCR § 2695.8(k).

16 i) In forty five (45) instances, Respondent failed to identify and use its own
17 name on correspondence, in violation of CIC § 880.

18 j) In forty-six (46) instances, Respondent failed to include California fraud
19 warning on insurance forms, in violation of CIC §§ 1871.2 and 1879.2.

20 k) In ten (10) instances, Respondent failed to inform the insured of the options
21 for signing the Theft Claim Affidavit, in violation CIC § 1871.3(b).

22 l) In one (1) instance, Respondent failed to notify the California Department
23 of Insurance of suspected fraud, in violation of CIC § 1872.4.

24 m) In six (6) instances, Respondent failed to notify the insured, who retained
25 possession of salvaged vehicles of their responsibility to comply with Department of Motor
26 Vehicles requirements on owner-retained salvaged vehicles, and the Department of Motor
27 Vehicles of the fact that the owner of a total loss salvaged vehicle had retained possession of the
28 vehicle, in violation of CVC § 11515(b).

6. The Examination report, with detailed information on each violation, including the name of insured, claim number, CCR, CIC and CVC section violated, together with a summary of Respondent's written response to each violation, was served on Respondent or its agent on January 24, 2003.

PRAYER AND NOTICE OF MONETARY PENALTY

7. WHEREFORE, Petitioner prays for judgment against Respondent, as follows:

a) An Order to Cease and Desist from engaging in such unfair acts or practices in violation of CIC § 790.03 and the regulations promulgated pursuant to CIC § 790.10, and other insurance code sections and related statutes, as set forth above;

b) Pursuant to CIC § 790.035, for willful acts in violation of CIC § 790.03 and CCR, Title 10, Chapter 5, Subchapter 7.5, §§ 2695.1 through 2695.17 (adopted pursuant to CIC § 790.034), as set forth above, a penalty in an amount to be fixed by the Commissioner not to exceed ten thousand dollars (\$10,000.00) for each act; and for each unfair or deceptive act or practice not found to be willful, a penalty in an amount to be fixed by the Commissioner not to exceed five thousand dollars (\$5,000.00) for each act;

c) For acts in violation of CIC § 704(b) suspension of Respondent's certificate of authority for a period not exceeding one year or a fine of fifty-five thousand dollars (\$55,000) in lieu of suspension pursuant to CIC § 704.7.

Dated: February 17, 2004

JOHN GARAMENDI
Insurance Commissioner

By /s/
Ramón Cintrón
Staff Counsel